



An
Bord
Pleanála

Inspector's Report ABP-302171-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Newcastle, Castletroy, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority VSL Reg. Ref.	VS-001-17
Site Owner	Duff & Phelps (Ireland) Ltd.
Planning Authority Decision	Place on Register
Date of Site Visit	4 October 2018
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Limerick City and County Council, stating their intention to enter the site at Newcastle, Castletroy, Co. Limerick on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice, dated 19 June 2018, is issued under Section 5(1)(a) and 5(2) of the Act and was issued to Kenny Builders & Co. Limited (In Receivership) c/o Anne O'Dwyer, Duff & Phepls (Ireland) Ltd.

2.0 Site Location and Description

The site comprises an area of open ground located on the Dublin Road in Castletroy to the east of Limerick City. The lands are adjoined to the west by commercial development including a petrol station and a town centre development, to the east by a recently constructed office type building and a school and to the south by existing residential development known as Woodhaven. The Dublin Road is located to the north of the site. The site includes an existing internal access road which provides access to the developments to the east and to the lands in question. There is a pathway from the end of this road through the lands to the housing development to the south.

3.0 Statutory Context

3.1. URH Act

- 3.1.1. Section 5(1)(a) of the Act, as amended by Section 63 of the Planning and Development (Amendment) Act 2018, states that in the case of a site consisting of residential land –
- (i) the site is situated in an area in which there is a need for housing,
 - (ii) the site is suitable for the provision of housing, and
 - (iii) the site, or the majority of the site, is
 - (l) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*.”.

4.0 Planning Authority Decision

4.1. Planning Authority Notice

Limerick City and County Council advised the site owner that the subject site (Planning Authority site ref. **VS-001-17**) had been identified as a vacant site. The notice, issued pursuant to section 6(2) of the Act and dated 19th June 2018, stated that the particulars of the site have been entered on the Vacant Sites Register under Sections 5(1)(a) and 5(2) of the Act. The notice was accompanied by a map outlining the site boundary.

4.2. Reports

- 4.2.1. A report prepared by the Planning Authority, entitled ‘Report to Senior Management of Limerick City and County Council’ dated 25/5/2018 in relation to the site which is presented in tabular format and states that the site is 2.6ha in area. It is also stated that the land is zoned for residential use and serviced and surrounded by existing houses, school, retail and cinema and school and that it is recommended that the site is entered on the Vacant Sites Register.
- 4.2.2. A report entitled Authorised Officers Inspection Report dated 11/1/2018 notes the planning history and that the site is serviced for infrastructure. The report then outlines the tests in Section 5(1)(a) of the Act and ticks and ‘X’ for each of the three parts. The recommendation states that the site is zoned for residential use and is serviced with a new school forming part of the eastern element of the site. It states that the site is vacant and idle.

5.0 Development Plan Policy

5.1. Castletroy Local Area Plan 2009 - 2015 (extended).

- 5.1.1. It is noted that the current plan for the area is the Castletroy Local Area Plan 2009-2015 which was extended in July 2014 subject to a resolution under Section 19(1)(d) of the PDA for a further 5 years. I would note that a draft plan is currently being prepared for the period 2019-2025.
- 5.1.2. The site has two zonings. Part of the site to the east is zoned residential development area with the area to the west of the site zoned retail/commercial/community. The LAP zoning map also includes that part of the site within the retail zoning within the boundary of Opportunity Site 0-4 which is detailed in Section 6.6 of the LAP and refers to the Castletroy District Centre, an area of 18 hectares, for which a masterplan is required.

6.0 Planning History

Ref. 06/4024 (PL13.229516) – construction of 240 dwellings in three areas/lots: area 1 consisting of 152 two-storey dwellings and areas 2 & 3 comprising 88 dwellings – 34 two-bed and 34 three-bed apartments within 3 storey duplex dwellings and 20 two-storey dwellings and crèche.

Ref. 13/7094 – Extension of duration of permission above.

7.0 The Appeal

7.1. Grounds of Appeal

An appeal was received on behalf of the owner and the grounds are summarised as follows:

- Owners wish to clarify that the title of the site owner is incorrect and that the correct title should read certain assets of Kenny Builders & Co. Ltd (In receivership);
- Notification letter from the PA received by the owner erroneously describes the site with the site only partly zoned for residential use with part zoned for

retail/commercial/community with the determination for inclusion on the basis of the residential zoning incorrect;

- Site included on Register without full and proper consideration of legislative requirements in respect of the relevant and correct landuse zoning objectives;
- One of mandatory obligations in section 5(1)(a)(iii) is whether the site is vacant or idle and while subject site might be vacant by virtue of there being nothing on it, the idle nature of the site (vacant or otherwise) must be considered relevant in the application of the provisions of Section 5(1)(a)(iii);
- Idle is not defined in the Act and in interest of clarity ordinary definition of the word idle (Oxford Dictionary) is 'without purpose or effect: 'pointless' with the site in this case not 'idle' but has a purpose and has planning effect with reference to an existing permission extant on the site (Ref. 06/4024(PL13.229516) extended by Ref. 13/7094 which is valid until 2019 with every intention to carry out the development;
- Owner mindful of reference in Circular to permissions on sites which have not been activated with the owner confirming that that permission has been activated by virtue of the commencement notice lodged, extent of compliance undertaken and actual commencement of the overall permitted development with construction commencing earlier in the year;
- Developer has completed substantial road improvement works to adjacent Walkers Road on behalf of LCCC enhancing road improvements in the area with considerable consultation ongoing between developer and LCCC since January 2018 with no suggestion provided to LCCC that the site subject of the Notice would not be developed subject to the permission, with design team currently engaged in further compliance with remaining condition;
- Site is neither vacant or idle given the current permission, activation of the permission and agreed approach to implement on a phased basis with substantial documentary evidence to this effect with site not fulfilling the definition of a vacant site;

- Eastern portion of site included within the 'vacant site' is zoned retail/commercial/community with consideration of this land considered under heading of 'regeneration land' as applied in Section 3 of the Act and variation 5 of the City and County Plan;
- Regeneration land must meet requirements of Section 5(1)(b) and Section 6(6) of the Act with owner unaware of anti-social behaviour taking place and LCCC does not mention same with the site failing to meet the criteria in Section 6(6)(b) and no evidence of reduction in number of habitable houses with CSO data supporting same which shows an increase in population in overall LAP area and small area population area between 2011-2016 with site failing to meet the criteria in Section 6(6)(c) with site not having adverse affects on amenities and not meeting definition of vacant site;
- PA required to consider Sections 7(1) and 7(2) of Act prior to entering site with owners agents informing LCCC of immediate intentions of the site and that site was not vacant with site entered without any clear logic and contrary to provision of the Act;
- Extend Architects advised that post decision telecommunications with PA where PA appear to accept mistaken inclusion of the site or parts of the site on the Register advising owner to appeal;

7.2. **Planning Authority Response**

In a response from Limerick City and County Council dated 13th August 2018 reference is made to the post decision telephone conversation (reference in the grounds of appeal above) and states that it was accepted by Town Planner, Deirdre McGrath, of the mistaken inclusion of part of the adjoining site to the west and also advised that we are now in the appeal period which is not a suitable time for entering into discussion/further discussion but that the letter submitted to the Local Authority by Extend Architecture was taken into consideration but not responded to in writing.

8.0 **Assessment**

8.1. **Introduction**

- 8.1.1. The notice in this instance was issued under Section 5(1)(a) of the Act which refers to residential lands. As I outline above, Section 5(1)(a) of the Act, was amended by Section 63 of the Planning and Development (Amendment) Act 2018, and now states that in the case of a site consisting of residential land –
- (i) the site is situated in an area in which there is a need for housing,
 - (ii) the site is suitable for the provision of housing, and
 - (iii) the site, or the majority of the site, is
 - (I) vacant or idle, or
 - (II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—
 - (A) after it became residential land, and
 - (B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*.”.

8.2. Procedural Matters

- 8.2.1. As detailed in the grounds of appeal and responded to by the Planning Authority it appears that part of the site to the west is zoned for retail/commercial/community and has erroneously been included within the boundary of the subject site for the purposes of the application of the Vacant Site Levy. The levy in this case is being imposed on the basis of Section 5(1)(a) of the Act which relates to residential lands. In this regard I consider that the Board should cancel the Notice in the first instance on the basis of this error. I would also point out, for the Boards information and for the avoidance of further confusion that the area of the site included in the Map attached to the Notice excludes an area of ground included in the maps attached to the reports prepared by the Planning Authority to inform the placing of the site on the Register and issuing of the Notice. Notwithstanding, the lands within the boundary of the map attached to the map include lands zoned for retail/commercial/community uses and therefore as I outline above, the notice should be cancelled as the Board do not have any power to amend the site boundary of a site subject to such a Notice.
- 8.2.2. I would also note that the appellants address the matters arising in respect of the tests for Regeneration Lands in section 5(1)(b) of the Act however the Notice was

issued under Section 5(1)(a) and therefore it is not appropriate to address same in the context of this appeal which is against the Notice issued. While I consider that the Notice should be cancelled for the procedural reasons outlined above, for the Boards information I will address the remainder of the issues arising.

8.3. Need and Suitability

As outlined above, Section 5(1)(a) clearly outlines the criteria required to determine whether a site is vacant or idle for the purposes of the Act. In relation to residential land and Section 5(1)(a) there are three criteria. While I address the matter of vacant and idle below, I would note that the Planning Authority did not undertake any examination of the matters of need for housing (Section 5(1)(a)(i)) which is determined by reference to Section 6(4) of the Act or suitability for housing (Section 5(1)(a)(ii)) which is determined by reference to Section 6(5) of the Act. These are specific requirements to determine whether the site meets the criteria and they have not been carried out by the Planning Authority in this instance and therefore I consider that the Planning Authority have not appropriately determined that there is a need for housing or that the site is suitable for housing. In this regard I consider that it is also appropriate to include this matter as a reason for cancelling the Notice.

8.4. Vacant or Idle

The third criteria included in Section 5(1)(a) relates to the site being either vacant or idle (I) or having a purpose (II) as set out in the amended Section 5(1)(a)(iii). The second and recently added Part (II) is not addressed in the appeal as the appeal predated the publication of the amendment. However I do not consider that it is directly relevant in this instance. I would note that the appellants do not challenge the vacant element of the Act but consider that by reason of implementing the permission pertaining on the lands that the site is not idle as it in effect has a purpose. While I note that 'idle' is not defined by the Act, attributing the meaning proposed by the appellant could be described as a longshot, given that no works have commenced on the site to implement the permission. However I would note that given the issues arising with the inclusion of lands not zoned residential and the absence of any consideration of key criteria in the legislation, the matter of vacant or idle are not critical in the consideration of the appeal at this time.

9.0 Recommendation

9.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the site at Newcastle, Castletroy, Co. Limerick was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19th June 2018 shall be removed.

10.0 Reasons and Considerations

10.1. Having regard to

(a) the information submitted to the Board by the planning authority in relation to the entry of the site on the Vacant Sites Register,

(b) the grounds of appeal submitted by the appellant,

(c) the report of the Inspector,

(d) the inclusion of lands within the site which are not zoned for residential use, and

(e) the absence of any evidence from the Planning Authority to determine that there is a need for housing in the area or that the site is suitable for housing as required by Section 5(1)(a) subsections (i) and (ii) by reference to Sections 6(4) and 6(5) of the Urban Regeneration and Housing Act 2015.

the Board considered that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Una Crosse
Senior Planning Inspector

October 2018